

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3881 OF 2019

Smt. Sarlaben Kevalchand Rathod

...Petitioner

Versus

Smt. Urmila Padmakar Wavikar

...Respondent

....

Mr. Pradeep J. Thorat, Advocate for the Petitioner.

Mr. V.Y. Sanglikar a/w. Chaitanya Chavan i/b. Gaurav A. Sawant,
Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 23rd APRIL, 2019

P.C.

1. Heard Mr. Pradeep J. Thorat, learned counsel for the petitioner and Mr.V.Y. Sanglikar, learned counsel for the respondent, at length.

2. This Petition takes exception to the order dated 5.12.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-8 in Appeal No.372/2017. By that order, the Appellate Court allowed application Exhibit-8 made by the petitioner, hereinafter referred to as the 'defendant', under Order XLI Rule 5 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') and stayed eviction decree dated 28.8.2017 passed by the learned trial Judge in R.A.E. Suit No.263/475 of 2005 subject to the condition of the defendant depositing amount of the compensation @ Rs.35,000/- per month from the date of the decree

i.e. 28.8.2017 till December, 2018 within three months from the date of the order. From December, 2018 onwards the defendant is directed to deposit further monthly interim compensation at the rate of Rs.35,000/- per month in the Court before 10th day of each succeeding month till final disposal of the appeal. The Registry of the Small Causes Court is directed to invest the amount, if deposited by the defendant, with any Nationalized Bank in fixed deposit scheme for one year and thereafter for the similar period till disposal of the appeal. The defendant is restrained from creating or handing over the possession of the suit premises to any third party till disposal of the appeal.

3. In paragraph-11, the Appellate Court noted that the suit premises is a residential flat of 390 sq. ft. situate at 2nd floor at Matunga, Mumbai. The defendant is monthly tenant of the suit premises. Monthly rent is Rs.96/-. The defendant produced valuation report showing that the monthly compensation would be Rs.26,550/-. As against this respondent, hereinafter referred to as the 'plaintiff', produced valuation report showing the reasonable compensation would be Rs.54,504/- per month.

4. After considering the valuation reports, the Appellate Court held that Rs.35,000/- per month would be just, reasonable and appropriate rent/compensation and accordingly passed the impugned order.

5. Mr. Sanglikar submitted that the defendant did not comply the impugned order. The defendant filed application on 16.4.2019 for condoning the delay in depositing compensation as per the impugned order and prayed for extension of time to deposit the amount. This was resisted by the plaintiff by filing say. By order dated 16.4.2019, the Appellate Court rejected the application. The matter was thereafter kept for execution and on 18.4.2019 order was passed on application Exhibit-13 for police protection and breaking open the lock. The Appellate Court reissued the execution as per Exhibit-13 and deferred the hearing on execution application to 30.4.2019. He submitted that the decree was executed on 22.4.2019 at 17:19 hours and possession is obtained by the respondent.

6. During the course of hearing, a query was made to Mr.Sanglikar as to whether the plaintiff is ready and willing to restore the possession of the suit premises to the defendant subject to the defendant depositing compensation @ Rs.26,550/- from the date of the decree i.e. 28.8.2017 till 30.4.2019. Mr. Sanglikar states that the plaintiff is present in the Court. He further states the daughter of the plaintiff who is a practicing Advocate is also present in the Court. He has tendered a photo-copy of passport of the plaintiff which is taken on record and marked 'A' for identification. Upon taking instructions from the plaintiff, Mr. Sanglikar assures that without prejudice to the rights

and contentions of the plaintiff and against deposit, on or before Friday, 26th April, 2019 the plaintiff will hand over possession of the suit premises to the defendant.

7. Mr. Thorat states that Mr. Ashish Kewalchand Rathod, son of the defendant is present in the Court today. He has tendered a photocopy of his Aadhaar Card, which is taken on record and marked 'B' for identification. Upon taking instructions from him, Mr. Thorat states that the defendant will deposit Demand Draft in the sum of Rs.5 Lakhs along with Rs.31,000/- in the Small Causes Court, Mumbai latest by tomorrow i.e. 24th April, 2019 and will produce the receipts on the next date of hearing.

8. In view thereof, list the petition for reporting compliance on **25.4.2019** at 3:00 p.m.. If by that time, the defendant deposits Rs.5,31,000/- in the Small Causes Court, the plaintiff will hand over possession of the suit premises to the defendant latest by 11:00 a.m. of 26.4.2019. It is made clear that this is without prejudice to the rights and contentions of both sides and validity of the impugned order will be considered by this Court on 30.4.2019.

9. All concerned parties, including the Small Causes Court at Mumbai, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)